**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 3960 of 2005**

**For Approval and Signature:**

**HON'BLE MR JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAMBHAI MOTIBHAI PATEL & 2 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 3 - Respondent(s)**

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**Appearance :**
MR JS YADAV for Petitioner No(s).: 1,2,3.
MR SUDHIR SHAH for Petitioner No(s).: 1,2,3.

MR MR MENGDEY AGP for Respondent No(s).: 1, 2, 3,4.

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**CORAM : HON'BLE MR JUSTICE AKIL KURESHI**

**Date : 21/07/2005**

**ORAL JUDGMENT**

In the present petition the petitioners have challenged the order dated 17/8/1998 passed by the Collector, Vadodara as also an order dated 31st December, 2004 passed by Special Secretary (Appeals) by which the order of the Collector came to be confirmed.

2.A piece of land bearing Survey No.1287/1 admeasuring hector 0-77-30 situated in Village Padara was held by one Shri Mitabhai Bhaijibhai Makwana. The said land was held by the land owner for agricultural purpose on a new and unalienable tenure. Said Shri Mitabhai Bhaijibhai Makwana was desirous of disposing of the said property and he, therefore, applied to the Collector, Vadodara for necessary permission. By an order dated 20th August, 1998, Collector was pleased to grant permission to said Shri Mitabhai Bhaijibhai Makwana to sell the land in question to Shri Manharbhai Shankarbhai Patel. Such a permission was granted on certain conditions including the condition that the sale is for agrigultural purpose alone, in the

hand of the buyer the land in question would be of new and unalienable tenure and that the land would not be sold, exchanged, gifted or in any other manner disposed of without the permission of the competent authority. It was also provided that breach of any of the conditions would automatically result into cancellation of the permission and the land would vest in the Government. Pursuant to the said permission the land came to be sold by Shri Mitabhai Bhaijibhai Makwana in favour of Shri Manharbhai Shankarbhai Patel. However, in the sale deed two more names of the buyers were added and the land is actually sold not only in favour of Shri Manharbhai Shankarbhai Patel but also jointly in favour of Shri Rambhai Motibhai Patel and Jamnaben Rambhai Patel.

3. Finding that the petitioners had breached the conditions of the permission to sell the land granted by the Collector, proceedings under the provisions of Bombay Land Revenue Code were taken against them and the Collector by his impugned order dated 17/8/1998 was pleased to hold that there has been breach of condition and consequently

ordered that the land in question shall vest in the Government free from all encumbrances. The revision application filed by the petitioners against the said order also came to be rejected by the Special Secretary (Appeals) by his order dated 31st December, 2004.

4. The petitioners have therefore challenged the above mentioned orders passed by the Revenue Authorities. It is mainly contented that Rambhai Motibhai Patel and Jamnaben Rambhai Patel are father-in-law and mother-in-law respectively of Manharbhai Shankarbhai Patel. Their names were inserted in the sale deed since Shri Manharbhai Shankarbhai Patel could not raise sufficient funds to purchase the entire land. He, therefore, joined his father-in-law and mother-in-law in the sale transaction. It is, therefore, contended that there is no intentional breach of any of the conditions and that the authorities ought not to have cancelled the said transaction in question.

5. From the above discussion, it appears that initially permission was granted by the Collector for the sale of the land in question only in favour

of Shri Manharbhai Shankarbhai Patel. The actual sale deed took place in favour of said Shri Manharbhai Shankarbhai Patel and his father-in-law and mother-in-law on account of his failure to raise sufficient fund to purchase the land. In that view of the matter, though there was a technical breach of the terms of the conditions of the permission granted by the Collector on 20th August, 1998 to sell the land, prima-facie there does not appear to be any malafide intention on the part of the petitioners. It also does not appear that on account of two more persons joining in the sale transaction there has been any loss to the Government. This however does not mean that the petitioners could have entered into sale deed without approaching the Government. One of the important conditions of granting permission for sale of the land was that in the hand of the purchaser the land will remain a new tenure land and would not be sold without prior permission of the competent authority. To ensure the sanctity of this condition also it would be necessary that appropriate condition should be imposed on all

petitioners even if the sale transaction is to be saved.

6. In view of the above discussion, I find it appropriate that the authorities to reconsider the entire issue. For the above purpose impugned orders dated 17th August, 1998 passed by the Collector, Vadodara and 31st December, 2004 passed by Special Secretary are quashed and set aside. The proceedings are remanded back to the Collector for fresh consideration. The Collector shall expeditiously consider whether the sale in question can be regularised as per the prevailing Government policy upon imposition of suitable conditions and if necessary levying fine if permissible under the law. The Collector shall bear-in-mind the observations made by the Court hereinabove. With these directions, the petition is allowed to the above extent and disposed of accordingly. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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